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10  
11 UNITED STATES BANKRUPTCY COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 In re  
15 PROFESSIONAL FINANCIAL  
INVESTORS, INC., a California  
16 corporation; PROFESSIONAL  
INVESTORS SECURITY FUND, INC., a  
17 California corporation,  
18 Debtors.

Case No. 20-30604  
(Jointly Administered with Case No. 20-30579)

Chapter 11

**DEBTORS' EMERGENCY MOTION  
FOR AN ORDER AUTHORIZING  
DEBTOR TO HONOR PREPETITION  
OBLIGATIONS TO EMPLOYEES**

*[Hearing Requested on Shortened Time]*

Date: August 5, 2020  
Time: TBD  
Judge: Hannah L. Blumenstiel  
Place: **Telephonic/Video Appearances  
Only**  
450 Golden Gate Avenue  
16<sup>th</sup> Floor, Courtroom 19  
San Francisco, CA 94102

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I.

INTRODUCTION

Professional Financial Investors, Inc. (“PFI”) and Professional Investors Security Fund, Inc. (“PISF” and, together with PFI, the “Debtors”), the debtors in the respective above-captioned bankruptcy cases, move this Court, on an emergency basis, for an interim and final order authorizing – but not requiring – PFI, the only Debtor in these Bankruptcy Cases that has employees, to pay any prepetition claims arising from the Debtors’ employee benefit plans and programs, and otherwise honor, in the ordinary course of business, existing employee benefit plans and programs and paid time off accruals, including all related costs and expenses, as such policies were in effect as of the commencement of these cases, even if so doing involves honoring prepetition claims.

The Debtors bring this motion (the “Motion”) pursuant to Sections 105 and 507 of title 11 of the United States Code. This motion is based on the discussion below, the *Declaration of Michael Hogan in Support of the Bankruptcy Filing and Early Case Administration Motions* filed on July 26, 2017 as Docket No. 5 (the “First Day Hogan Declaration”), as supplemented by the *Supplemental Declaration of Michael Hogan in Support of the Bankruptcy Filing and Early Case Administration Motions* filed concurrently with this motion (the First Day Hogan Declaration, as so supplemented, the “Hogan Declaration”), the other papers of record in this case and upon such further oral and documentary evidence as may be presented prior to or at the time of the hearing on the motion.

The relief requested in this Motion is necessary and appropriate to ensure a smooth transition into chapter 11, to maintain existing business operations during the turbulent early stages of this bankruptcy case, to maintain stable operations at the numerous apartment buildings and office parks owned directly by the Debtors or in which they have an indirect ownership interest (each individually a “Real Property” and, collectively, the “Real Properties”) for the benefit of each Real Properties’ respective tenants, and to preserve and maximize the value of the Real Properties for the benefit of the Debtors’

1 creditors. PFI serves as the property manager for all of the Real Properties as well as the  
2 operational arm that manages and accounts for both Debtors' activities. PFI is continuing  
3 to perform those roles post-petition and the Debtors believe that any failure to honor  
4 certain of PFI's employee-related obligations in the ordinary course of its business would  
5 create hardship and discontent among PFI's employees, which would in turn decrease  
6 productivity and undermine PFI's ability to retain employees and both Debtors' abilities to  
7 continue normal operations, and ultimately, to preserve and maximize the value of their  
8 assets, including the Real Properties. No insiders of either PFI or PISF are current  
9 employees and so the relief covered in this motion does not request any relief regarding  
10 insiders.

11       If PFI cannot assure its employees that it will promptly pay employment-related  
12 payments and benefits, employee morale and the Debtors' operations will suffer, and  
13 numerous tenants and the Real Properties likely will be negatively impacted. The Debtors  
14 believe that the livelihood of many of the employees of PFI depends on the income  
15 provided through their work for PFI. Many of them rely on their wages as their only  
16 source of income, and the loss of this income for even a few days may result in a financial  
17 hardship for them. Additionally, many of PFI's employees have incurred hundreds of  
18 dollars of prepetition reimbursable expenses in the course of their employment, which they  
19 would be otherwise obligated to pay themselves. Lastly, PFI's employees and their  
20 dependents would also unduly suffer if they were to be unable to utilize PFI's medical  
21 benefits, which are particularly essential during the current COVID-19 pandemic.  
22 Employee support for the Debtors' continued operations is critical. Without such support,  
23 the Debtors face the imminent risk that their operations will be severely impaired,  
24 potentially endangering the well-being and business operations of the tenants at the Real  
25 Properties.

1 **II.**

2 **STATEMENT OF FACTS**

3 **A. The Debtors' Background.**

4 PFI commenced its bankruptcy case, Case No. 20-30604 (the "PFI Case"), by filing a  
5 voluntary chapter 11 petition on July 26, 2020. PISF's bankruptcy case, Case No. 20-  
6 30579 (the "PISF Case" and together with the PFI Case, the "Bankruptcy Cases")  
7 commenced July 16, 2020 when certain investors filed an involuntary chapter 11 petition  
8 against PISF. The Debtors continue to operate their respective businesses as a debtor in  
9 possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official  
10 committee has been appointed by the Office of the United States Trustee in either of the  
11 Bankruptcy Cases.

12 The Hogan Declaration contains a detailed discussion of the Debtors' background,  
13 capital structure, and the events leading to their chapter 11 cases. The discussion  
14 contained in the Hogan Declaration is incorporated in this motion as though fully set forth  
15 here.

16 **B. The Debtors' Employees and Employee Claims**

17 As of the date each of the Bankruptcy Cases commenced, various amounts of  
18 prepetition employee obligations were owed or had accrued because, among other things:

19 (a) PFI filed its chapter 11 petition in the middle of one of its regular and  
20 customary expense reimbursement periods. PFI normally distributes expense  
21 reimbursement checks to its employees on or around the fifteenth (15<sup>th</sup>) day of each  
22 month for all expenses incurred by such Employees over the course of the  
23 preceding month. On July 15, 2020, PFI issued expense reimbursement checks for  
24 expenses incurred by its employees up through that date; however, the next round of  
25 reimbursement checks covering expenses incurred by PFI's employees beginning  
26 on July 16, 2020 are not due to be issued until on or about August 15, 2020.

27 Accordingly, various amounts in prepetition expense reimbursement liabilities were  
28 due and owing as of the date the PFI Case commenced.

1 (b) Some payroll and expense reimbursement checks issued to PFI  
2 employees prior to the date the PFI Case commenced have not been presented for  
3 payment yet or have not cleared the banking systems yet and, accordingly, have not  
4 been honored and paid as of such date; and

5 (c) Certain other forms of compensation (including sick pay, paid time  
6 off, and withholdings for benefit plan contributions) related to prepetition services  
7 have not been honored because such benefits, although accrued before the date the  
8 PFI Case commenced, were not payable but rather will become payable in the  
9 ordinary course of PFI's business.

10 For the reasons discussed below, it is crucial that PFI be authorized to pay certain  
11 prepetition benefits and expense reimbursements to their employees.

12 **C. PFI's ' Employees are Essential to The Debtors' Continued Operations and to**  
13 **Preserve the Value of the Estates**

14 PFI has a total staff of forty five (45) full-time employees in the United States (the  
15 "Employees"). PISF does not currently have any employees. PFI serves as the property  
16 manager for all of the Debtors' Real Properties, which consist of approximately seventy  
17 total apartment complexes and office parks in Marin and Sonoma Counties, California.  
18 Approximately eleven (11) of PFI's Employees occupy administrative roles (e.g.,  
19 accounting, marketing, leasing, and business development), while the majority are  
20 employed to manage and maintain the Real Properties. This includes eight (8) Employees  
21 whose primary role is commercial property management and twenty-six (26) Employees  
22 whose role is residential property management and maintenance (e.g., Property Managers,  
23 Maintenance Technicians, and Facilities Coordinators), of which six (6) are Resident  
24 Property Managers who each live on-site at one of the Real Properties. Accordingly, if  
25 any of PFI's Employees were to leave, operations at the Real Properties – including those  
26 in which PISF has an ownership interest — almost certainly would be negatively impacted  
27 and potentially cease, the tenants at the Real Properties likely would suffer, and the value  
28 of the Real Properties would be reduced. Accordingly, PFI's Employees are essential to



1 both Debtors' continued operations and viability, as well as to the Debtors' ability to fulfill  
2 their duties as debtors-in-possession in these bankruptcy cases. Certain PFI Employees are  
3 and will be involved in preparing the schedules and statement of financial affairs in this  
4 case, preparing financial analyses and budgets, preparing monthly operating reports,  
5 overseeing both Debtors' operations, and managing and maintaining both Debtors' Real  
6 Properties during the pendency of these bankruptcy cases.

7       The filing of this bankruptcy case has disrupted the Debtors' normal operations.  
8 Unless PFI can promptly honor its prepetition employee obligations, the Debtors believe  
9 that employee morale will suffer, and many Employees may be unable to meet their own  
10 personal obligations in these already trying times. If that happens, it will lead to the risk  
11 that Employees will find employment elsewhere, and both Debtors' business operations  
12 will be interrupted in the midst of this critical period. PFI's Employees are intimately  
13 knowledgeable about both of the Debtors' operations and business affairs, as well as about  
14 operations at the Real Properties, and their retention is necessary to ensure a timely and  
15 efficient bankruptcy process. Moreover, the continued provision of regular building  
16 maintenance and property management services by PFI's Employees is critical to the  
17 approximately 2,700 residents and 400 businesses that call the Real Properties their home  
18 and/or their office. The suspension or diminution of such maintenance and property  
19 management services could also diminish the value of the affected Real Properties, and  
20 thus harm creditors. Without PFI's Employees, neither Debtor will be able to continue to  
21 effectively operate its business, and their ability to preserve and maximize the value of  
22 their assets – particularly, the Real Properties – will be jeopardized. Therefore, all major  
23 constituencies, including creditors, Employees, and tenants, will benefit from PFI's ability  
24 to pay certain prepetition benefits and expenses to its Employees.

#### 25 **D. Employee Benefits**

26       PFI's business practice has been to supplement the wages and salaries of its full-  
27 time Employees by providing them with certain employee benefit programs. These  
28 programs include such standard benefits as paid time off and medical and dental insurance.

1 PFI is continuing these programs in the ordinary course of its business operations. The  
2 relief sought in this Motion relates only to those unpaid, prepetition benefits that were  
3 earned in connection with certain of PFI's benefit programs as more fully described below.

4 1. Paid Time Off Benefits.

5 The majority of PFI's Employees accrue two (2) weeks of paid time off per year,  
6 while a small minority of PFI's Employees accrue three (3) weeks of paid time off per  
7 year. Annually accrued paid time off is not capped for either of these groups.

8 Upon termination, PFI pays all Employees for any accrued but unused paid time  
9 off, pursuant to applicable law. By this Motion, the Debtors seek authority, in their sole  
10 discretion, to continue to honor PFI's paid time off policies in the ordinary course,  
11 including to allow Employees post-petition to take paid time off earned prepetition. The  
12 Debtors are not seeking authority now to compensate Employees for accrued and unused  
13 paid time off in the event of a termination. The Debtors do not expect PFI to be  
14 terminating any of its Employees as a result of this bankruptcy, but to the extent any  
15 Employees are terminated in the ordinary course of business, such terminated Employees  
16 will instead retain a claim for such prepetition accrued and unused paid time off.

17 2. Medical and Dental Benefits.

18 Employees are also entitled to certain medical and dental benefits. PFI's average  
19 total monthly expense for medical and dental benefits for its Employees is approximately  
20 \$16,000. By this Motion, the Debtors seek authority, in their sole discretion, to continue to  
21 honor PFI's medical and dental benefits policies in the ordinary course, including allowing  
22 Employees post-petition to utilize such benefits. The Employees' continued ability to  
23 utilize PFI's medical benefits is particularly crucial given the need for affordable access to  
24 healthcare and testing during the global COVID-19 pandemic, which has had a significant  
25 impact on the San Francisco Bay Area (where the Debtors believe the majority of PFI's  
26 Employees reside).

1 **E. Employee Reimbursements**

2 From time to time, the Employees incur miscellaneous expenses related to their  
3 jobs, including mileage costs as well as gas, cell phone, and utilities expenses for certain  
4 Employees. These expenses were routinely reimbursed by PFI before the Petition Date.  
5 Employees generally submit expense reports, including receipts or other backup  
6 documentation, in order to receive reimbursement for their business expenses. After  
7 receiving approvals, PFI would remit payment to the employee on or about the fifteenth  
8 (15<sup>th</sup>) day of each month.

9 For the four (4) months preceding the Petition Date (April through July 2020), the  
10 total monthly expenses reimbursed by PFI to its Employees have ranged between  
11 \$3,211.14 and \$5,484.75 in total, with an average of \$4,330.435. Out of this, PFI incurs  
12 fixed reimbursement costs of approximately (i) a total of \$300.00 per month for certain  
13 Employees' PG&E expenses, (ii) a total of \$310.00 per month for certain Employees' cell  
14 phone expenses for the preceding month's billing period (that is, on July 15, 2020, PFI  
15 reimbursed employees for the billing period lasting June 1, 2020 through June 30, 2020),  
16 as well as (iii) \$844.00 per month for certain Employees' fuel allowance. Additionally, PFI  
17 reimburses variable costs for mileage expenses incurred by certain Employees each month,  
18 ranging from a total of \$1,757.14 to \$4,030.75, and averaging a total of \$2,876.44 for the  
19 four (4) months preceding the commencement of the PFI Case.

20 In accordance with its standard reimbursement policies, on July 15, 2020 PFI issued  
21 \$4,678.15 in reimbursements to its Employees for expenses incurred over the preceding  
22 month. However, PFI estimates that approximately \$3,232.76 in reimbursements have not  
23 been presented for payment yet or have not cleared the banking systems yet and,  
24 accordingly, have not been honored and paid as of July 29, 2020. Additionally, based on  
25 current information, PFI estimates that there are approximately \$2,222.19 in  
26 reimbursements owing to its Employees for expenses incurred between July 15, 2020 and  
27 before the commencement of the PFI Case. By way of this Motion, the Debtors seek  
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1 authority to reimburse Employees for such expenses, in order to avoid hardship for the  
2 Employees who would otherwise be independently obligated to pay such amounts.

3 Failure to approve payment for prepetition reimbursable expenses would be a blow  
4 to employee morale and could undermine PFI's ability to retain its Employees at this  
5 critical time period. Many Employees are reliant on the timely payment of  
6 reimbursements for expenses incurred in the course of their employment by PFI, which can  
7 amount to nearly \$700 per month for certain Employees. The denial of prepetition  
8 reimbursements due and owing to the Employees would create additional hardship in the  
9 midst of an already challenging macroeconomic climate, and could erode their  
10 commitment to PFI, which is crucial for the Debtors to successfully navigate through the  
11 bankruptcy process.

### 12 **III.**

#### 13 **NEED FOR RELIEF**

14 The Debtors seek the relief requested by the Motion because any delay by PFI in  
15 honoring its prepetition employee obligations will destroy its relationship with its  
16 Employees, irreparably impair employee morale, and may cause a mass exodus of  
17 Employees. The Debtors believe that the livelihood of many of PFI's Employees depends  
18 on the income provided through their work for PFI. Many of them rely on their wages as  
19 their only source of income. To them, the loss of this income for even a few days may  
20 result in a financial hardship. Employee support for the Debtors' continued operations is  
21 critical. Without such support, the Debtors face the imminent risk that their operations will  
22 be severely impaired, which could result in harm to the numerous businesses and residents  
23 that are tenants of the Real Properties.

### 24 **IV.**

#### 25 **REQUESTED RELIEF**

26 By way of this Motion, the Debtors seek an interim and final order from the Court,  
27 substantially in the form attached hereto as Exhibit A:

28 2. authorizing (but not requiring) PFI to:

1 (b) pay prepetition wages and salaries owed to its Employees,  
2 including payroll and reimbursement requests;

3 (c) pay any prepetition claims arising from PFI's employee benefit  
4 plans and programs, and otherwise honor, in the ordinary course of business,  
5 existing employee benefit plans and programs and paid time off accruals,  
6 including all related costs and expenses, as such policies were in effect as of  
7 the commencement of these cases, even if so doing involves honoring  
8 prepetition claims; and

9 3. authorizing, but not directing, applicable banks and other financial  
10 institutions to receive, process, honor and pay any and all checks drawn on and  
11 transfers made from the Debtors' accounts to the extent that those checks or  
12 transfers relate to any of the foregoing; and

13 4. granting related relief.

14 **V.**

15 **ARGUMENT**

16 **A. PFI's Employees Are Essential to the Debtors' Continued Operations.**

17 It is generally recognized that the continuation of a stable employee base and  
18 harmonious employee relations in operating chapter 11 cases is critical to preserving the  
19 value of the bankruptcy estate.<sup>1</sup> As noted by one court, "the need to pay pre-petition  
20 employee wage claims in an ordinary course of business time frame is simple common  
21 sense. Employees are more likely to stay in place and to refrain from actions which could  
22 be detrimental to the case and/or the estate if their pay and benefits remain intact and  
23 uninterrupted." *In re Equalnet Comm. Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000).  
24 The Debtors believe that any failure by PFI to pay its prepetition employee-related

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27 <sup>1</sup> See, e.g., *LTV Corp. v. Aetna Cas. & Surety Co. (In re Chateaugay Corp.)*, 116 B.R. 887,  
28 898 (Bankr. S.D.N.Y. 1990); *In re Gulf Air, Inc.*, 112 B.R. 152, 154 (Bankr. W.D. La.  
1989) ("[R]etention of skills, organization, and reputation . . . must be considered valuable  
assets contributing to going concern value and aiding rehabilitation . . .").

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1 obligations and otherwise honor such obligations in the ordinary course of business would  
2 create great concern and discontent among its Employees and undermine morale, and  
3 would therefore endanger PFI's ability to retain its Employees. As discussed above, the  
4 Debtors require the services of these Employees to operate their businesses, maintain and  
5 manage the Real Properties, and to preserve the value of the bankruptcy estate. Due to the  
6 Employees' familiarity with the Debtors' business operations and the Real Properties,  
7 PFI's current Employees are crucial to the Debtors' operations on a day-to-day basis, and  
8 ultimately, to a successful outcome for creditors.

9 Courts have often permitted debtors to pay prepetition wage claims in the ordinary  
10 course of business in response to a motion filed by the debtor in possession near the  
11 beginning of the case.<sup>2</sup> Furthermore, the relief requested herein is routinely granted in  
12 chapter 11 cases that involve a workforce that is critical to the debtor's business  
13 operations.<sup>3</sup> The Debtors cannot afford to lose the services of the Employees during this  
14 critical time period. The Debtors' businesses cannot continue without PFI's workforce. If  
15 the Debtors cannot promptly assure the Employees that PFI will honor employment  
16 benefits as described above, the Debtors' operations likely will suffer immediate and  
17 irreparable harm, due to resulting employee resentment, loss of employee goodwill, and  
18 possible attrition, all at this critical time for the Debtors.

19 **B. Honoring The Prepetition Employee Obligations Is Just And Necessary To**  
20 **Preserve Employee Morale.**

21 The prepetition employee obligations are critical to the Employees' livelihood.  
22 Many of these Employees rely on their wages as their only source of income. To them, the  
23 loss of this income for even a few days may result in a financial hardship. Allowing PFI to  
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27 <sup>2</sup> See e.g., *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985 (2016) (recognizing that  
28 "‘first-day’ wage orders” serve “significant Code-related [] objectives”); see also, 4 *Collier*  
*on Bankruptcy* ¶ 507.06 (16<sup>th</sup> ed. rev. 2019).  
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1 honor its prepetition employee obligations is just under the circumstances because it would  
2 reassure the Employees that these essential benefits will not be disrupted. This would  
3 ameliorate the financial difficulties of PFI's Employees, which is recognized as one of the  
4 reasons for the priority status that the Bankruptcy Code affords the wages of debtors'  
5 employees.

6 The Debtors believes that any failure by PFI to honor its prepetition employee  
7 obligations would cause hardship to its Employees. Granting the requested relief and  
8 approving these obligations contributes to alleviating the financial hardship of the  
9 employees and should be approved.

10 **C. The Prepetition Employee- Related Amounts Are Within The Priority Claim**  
11 **Cap of Section 507(a)(4) And Would Be Paid Ahead of Unsecured Claims.**

12 Section 507(a) provides fourth priority for:

13 (4) allowed unsecured claims, but only to the extent of \$13,650  
14 for each individual or corporation, as the case may be, earned  
15 within 180 days before the date of the filing of the petition or  
the date of the cessation of the debtor's business, whichever  
occurs first, for —

16 (A) wages, salaries, or commissions, including vacation,  
17 severance, and sick leave pay earned by an individual...<sup>4</sup>

18 The wages and other prepetition employee-related obligations accrued within the  
19 180-day period prior to the Petition Date are well within the priority claim cap under  
20 section 507(a)(4). The Employees owed these obligations may file claims for these  
21 amounts against PFI's estate. Such claims would be entitled to section 507(a)(4) priority  
22 status and, thus, would be paid ahead of other unsecured claims. As such, the Debtors  
23 maintain that the payment of the prepetition employee-related amounts is appropriate and  
24 should be approved.

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27 <sup>3</sup> See, e.g., *Burchinal v. Central Washington Bank (In re Adams Apple, Inc.)*, 829 F.2d  
28 1484, 1490 (9th Cir. 1987) (courts have permitted the payment of employee prepetition  
debts when necessary for rehabilitation).

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1 **D. Reimbursing Employee Business Expenses and Honoring Employee Benefits**  
2 **Programs Are Matters that Are Within the Debtors' Business Judgment.**

3 It is generally recognized that the continuation of a stable employee base and  
4 harmonious employee relations in operating chapter 11 cases is critical. As the court  
5 stated in *In re Chateaugay Corp.*:

6 [E]mployee good will and contentment is an asset which is vital  
7 to the continuation of a debtor's business operation and its ability  
8 to effectively reorganize during the Chapter 11 process. [citation  
9 omitted] In granting Debtors' applications for permission to  
10 provide hardship payments to injured workers, this Court  
determined that the uninterrupted payment of LTV Steel  
workers' compensation obligations is essential to employee  
morale and industrial tranquility which, in turn, are critical to a  
successful reorganization.<sup>5</sup>

11 The relief requested to make payroll and reimbursement payments for the  
12 prepetition period and to honor employee benefit programs in the ordinary course of  
13 business is necessary to preserve employee morale and ensure that the Debtors can retain  
14 the valuable and experienced employees that are the backbone of their businesses and will  
15 preserve the value of their estates. The relief requested will also provide an incentive for  
16 employees to continue to provide quality services to the Debtors and their tenants.

17 The employee benefit plan payments are further justified because they are within  
18 the priority claim cap under Section 507(a)(5) and thus would be paid ahead of other  
19 unsecured claims in any event.

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25 <sup>4</sup> 11 U.S.C. § 507(a)(4).

26 <sup>5</sup> *LTV Corp. v. Aetna Casualty & Surety Co. (In re Chateaugay Corp.)*, 116 B.R. 887, 898  
27 (Bankr. S.D.N.Y. 1990); *see also In re Gulf Air, Inc.*, 112 B.R. 152, 154 (Bankr. W.D. La.  
28 1989) (“[R]etention of skills, organization, and reputation . . . must be considered valuable  
assets contributing to going concern value and aiding rehabilitation. . .”).

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1 **E. It Is In The Best Interests Of the Debtors' Estates that Prepetition Payroll and**  
2 **Reimbursement Payments Be Paid and the Benefit Programs Be Maintained as**  
3 **to Continuing Employees.**

4 As described above, failure to honor payroll payments for the prepetition period and  
5 to maintain the benefit programs would be detrimental to PFI's employee base and  
6 diminish the Debtors' prospects for maximizing the return to its creditors.

7 Courts frequently have allowed debtors-in-possession to engage in transactions that  
8 encourage employee stability for the good of the debtor's estate and creditors. In *In re*  
9 *Gulf Air, Inc.*,<sup>6</sup> the court authorized the payment of all prepetition amounts due to the  
10 debtor's employees, including salary, expenses, and the payment of prepetition health, life,  
11 and workers' compensation premiums. The court stated:

12 While prepetition claims are normally disposed of in a plan of  
13 reorganization and in accordance with statutory priorities, there  
14 are well-established "necessity of payment" and similar  
exceptions.

\* \* \* \*

15 The Court finds and concludes that grant of the Debtor's  
16 Motion in its entirety is in the best interest of creditors, the  
17 Debtor, and its employees, and is "necessary", in fact,  
18 indispensable at this time for any successful reorganization.  
19 An air carrier, no less than a rail carrier, is more than the sum  
of its parts. Despite the capital-intensive nature of the railroad  
industry, and to a lesser extent, the airline industry, retention of  
skills, organization, and reputation for performance must be  
considered valuable assets contributing to going concern value  
and aiding rehabilitation where that is possible.<sup>7</sup>

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22 <sup>6</sup> *In re Gulf Air, Inc.*, 112 B.R. 152 (Bankr. W.D. La. 1989).

23 <sup>7</sup> *Id.* at 153-54. *In re Chateaugay Corp.*, 116 B.R. at 898 ("In granting Debtors'  
24 applications for permission to provide hardship payments to injured workers, this Court  
25 determined that the . . . payment . . . is essential to employee morale . . ."); *In re Eagle-*  
26 *Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (debtor may pay  
prepetition debt due employees to avert serious threat to continued operations); *Dubuque*  
27 *Packing Co. v. Stonitsch (In re Isis Foods, Inc.)*, 37 B.R. 334, 336 n.3 (W.D. Mo. 1984),  
28 *appeal dismissed*, 738 F. 2d 445 (8th Cir. 1984) ("It would appear that the proposed  
transfers could be presented in advance to a bankruptcy court for its approval and would  
thereafter be insulated from attack under section 549 . . .").

1 Likewise here, PFI's Employees should be allowed their regular benefits and paid  
2 time off accruals. These are important components of their compensation. As to paid time  
3 off, it would be unfair to penalize those Employees with substantially earned paid time off  
4 accruals, which result from Employees' decisions to provide service to the Debtors instead  
5 of taking vacation time. The Debtors propose to honor such paid time off and to allow  
6 Employees to use it until terminated, in order to reward loyalty to the Debtors.

7 **VI.**

8 **EMERGENCY CONSIDERATION**

9 The Debtors respectfully request emergency consideration of this Motion pursuant  
10 to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days  
11 after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid  
12 immediate and irreparable harm." As previously discussed throughout, the Employees are  
13 the lifeblood of the Debtors' operations. They are critical to the maintaining the property  
14 management services that PFI has customarily provided to the Real Properties and will be  
15 critical as well to the Debtors' ability to meet their financial and operational reporting and  
16 other obligations in bankruptcy. If the Debtors do not receive the requested relief  
17 immediately, their business operations would be severely disrupted at this critical juncture  
18 in the chapter 11 cases and the tenants at the Real Properties could suffer the  
19 consequences. Accordingly, the Debtors respectfully submit that they have satisfied the  
20 "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and, therefore,  
21 respectfully request that the Court approve the relief requested in this Motion on an  
22 emergency basis.

23 **VII.**

24 **REQUEST FOR BANKRUPTCY RULE 6004 WAIVERS**

25 The Debtors respectfully request a waiver of any applicable notice requirements  
26 under Bankruptcy Rule 6004(a) and any stay of the order granting the relief requested  
27 herein pursuant to Bankruptcy Rule 6004(h). As explained above and in the Hogan  
28 Declaration, the relief requested herein is necessary to avoid immediate and irreparable

1 harm to the Debtors. Accordingly, ample cause exists to justify the waiver of the notice  
2 requirements under Bankruptcy Rule 6004(a) and the 14-day stay imposed by Bankruptcy  
3 Rule 6004(h), to the extent such notice requirements and such stay apply.

4 **VIII.**

5 **CONCLUSION**

6 WHEREFORE the Debtors respectfully request entry of an order, substantially in  
7 the form attached as Exhibit A, granting the relief requested, and providing such other and  
8 further relief as is just and proper.

9  
10 Dated: July 30, 2020

11 SHEPPARD MULLIN RICHTER & HAMPTON LLP

12  
13 Bv

/s/ Ori Katz

ORI KATZ

J. BARRETT MARUM

MATT KLINGER

GIANNA SEGRETTI

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16 Proposed Counsel for Debtors  
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**EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

In re  
PROFESSIONAL FINANCIAL  
INVESTORS, INC., a California  
corporation; PROFESSIONAL  
INVESTORS SECURITY FUND, INC., a  
California corporation,  
  
Debtors.

Case No. 20-30604  
(Jointly Administered with Case No. 20-30579)

Chapter 11

**[PROPOSED] ORDER APPROVING  
DEBTORS' EMERGENCY MOTION  
FOR AN ORDER AUTHORIZING  
DEBTOR TO HONOR PREPETITION  
OBLIGATIONS TO EMPLOYEES**

Date: TBD  
Time: TBD  
Judge: Hannah L. Blumenstiel  
Place: **Telephonic/Video Appearances  
Only**  
450 Golden Gate Avenue  
16<sup>th</sup> Floor, Courtroom 19  
San Francisco, CA 94102

**DEBTORS' EMERGENCY MOTION FOR AN ORDER AUTHORIZING  
DEBTOR TO HONOR PREPETITION OBLIGATIONS TO EMPLOYEES**

The *Debtors' Emergency Motion for An Order Authorizing Debtor To Honor Prepetition Obligations To Employees* (the "Motion"), filed by Professional Financial Investors, Inc. ("PFI") and Professional Investors Security Fund, Inc. ("PISF" and, together with PFI, the "Debtors") on July 30, 2020 as Docket No. \_\_\_, came before the Court for hearing on \_\_\_, 2020 at [ : ] [a.m.]/[p.m.]. Appearances were as noted on the record. Based upon the Court's review of the Motion, the declarations and other pleadings filed in support of the Motion, the arguments of counsel at the hearing on the Motion, and all pleadings and evidence of record in this case,

SMRH:4834-8871-3669.5

Exh A-1

1 IT IS HEREBY ORDERED THAT:

2 2. The Motion is GRANTED. Capitalized terms not defined in this Order shall  
3 have the meanings given to them in the Motion.

4 3. PFI is authorized, but not required to, in its sole discretion:

5 (b) to pay the prepetition wages and salaries owed to its Employees,  
6 including payroll and reimbursement requests in an amount up to the cap of \$13,650  
7 per employee under Section 507(a)(4) of the Bankruptcy Code (except where  
8 otherwise noted in the Motion); and

9 (c) to pay any prepetition claims arising from PFI's employee benefit  
10 plans and programs and otherwise honor, in the ordinary course of business,  
11 existing employee benefit plans and programs and paid time off accruals, including  
12 medical and dental benefits and all related costs and expenses, as such policies were  
13 in effect as of the commencement of this bankruptcy case, even if so doing involves  
14 honoring prepetition claims.

15 4. All Banks and other financial institutions are authorized and directed to  
16 receive, process, honor, and pay all checks presented for payment by the Debtors and to  
17 honor all fund transfer requests related to such obligations. The Banks shall not be liable  
18 to any party on account of: (a) following the Debtors' representations, instructions, or  
19 presentations as to any order of the Court (without any duty of further inquiry); (b) the  
20 honoring of any prepetition checks, drafts, wires, or ACH Payments in a good faith belief  
21 or upon a representation by the Debtors that the Court has authorized such prepetition  
22 check, draft, wire, or ACH Payments; or (c) an innocent mistake made despite  
23 implementation of reasonable handling procedures.

24 5. Nothing in this Order: (i) is intended or shall be deemed to constitute an  
25 assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an  
26 admission as to the validity of any claim against the Debtors or their estates; (ii) shall  
27 impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates to  
28 contest the validity, priority, or amount of any claim against the Debtors or their estates;

SMRH:4834-8871-3669.5

Exh A-2

1 (iii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their  
2 estates with respect to any and all claims or causes of action against any third party; or (iv)  
3 shall be construed as a promise to pay a claim or continue any applicable program post-  
4 petition, which decision shall be in the discretion of the Debtors. Any payment made  
5 pursuant to this Order is not intended to be nor should it be construed as an admission as to  
6 the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such  
7 claim.

8 6. Notwithstanding anything to the contrary contained in this Order, any  
9 payment made or other action taken by the Debtors pursuant to the authority granted  
10 herein, as well as the exercise of any and all other rights and authorizations granted or  
11 approved hereunder, shall be subject in all respects to any final orders regarding the  
12 Debtors' use of cash collateral approved by this Court in these Chapter 11 Cases (the  
13 "Cash Collateral Order").

14 7. In the event of any inconsistency between the terms or conditions of this  
15 Order and the terms or conditions of the Cash Collateral Order, the provisions of the Cash  
16 Collateral Order shall govern and control.

17 8. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

18 9. Notice of the Motion as provided therein shall be deemed good and sufficient  
19 notice of such Motion under the circumstances and the requirements of Bankruptcy Rule  
20 6004(a) and the Local Rules are satisfied by such notice.

21 10. Notwithstanding the applicability of Bankruptcy Rule 6004(h), the terms and  
22 conditions of this Order shall be immediately effective and enforceable upon its entry.

23 11. The Debtors are authorized to take all such actions as are necessary or  
24 appropriate to implement the terms of this Order.

25 12. A final hearing to consider the relief requested in the Motion shall be held on  
26 [ ] at [ ] (prevailing Pacific Time) and any objections or  
27 responses to the Motion shall be filed and served so as to be actually received on or prior  
28 to , [ ] at [ ] (prevailing Pacific Time).

1           13.    This Court shall retain jurisdiction to hear and determine all matters arising  
2 from or related to the implementation, interpretation, or enforcement of this [Interim]  
3 Order.

4  
5                                   **\*\*\*END OF PROPOSED ORDER\*\*\***  
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